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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

TRACEY JOHNSON , Plaintiff and Appellant, v. THE CRICKET COMPANY, LLC, Defendant and Respondent.	A126963 (Humboldt County Super. Ct. No. DR080375)

Plaintiff Tracey Johnson, the owner of a hair salon, was cutting a customer's hair using a pair of scissors manufactured by defendant The Cricket Company (Cricket) when she suffered injuries allegedly caused by the defective design and manufacture of the scissors, and the deceptive manner in which it was sold. She filed a complaint for damages in which she alleged seven causes of action, three for differing theories of product liability, and four for various alleged misrepresentations. The entire complaint for damages fell before Cricket's summary judgment motion. We conclude that summary adjudication was properly granted as to those causes of action alleged by Johnson concerning alleged misrepresentations made by Cricket preceding Johnson's purchase of the scissors, but was improperly granted as to her three products liability causes of action. We thus affirm in part and reverse in part.

BACKGROUND

Johnson is a licensed cosmetologist who has been cutting and styling hair since 1988. Starting in 1999, she sold cosmetological products for West Coast Beauty Systems

as well as continuing to work in the Eureka hair salon she owned.[1] Johnson was apparently a cracker-jack sales representative, earning more than $66,000 in 2005.[2] One of the new items she began offering in early 2006 for sale was the Q-575 scissors designed by Cricket, which oversees their manufacture, and is responsible for their sale.[3] The tips of the Q-575 scissors come to a much sharper point than in Cricket's C2-525 scissors that the Q-575 replaced.

On May 9, 2006, Johnson was cutting a customer's hair in the Eureka salon using Q-575 scissors, only the second time Johnson had used the scissors. Johnson had bought the scissors—which are also called "shears" in various parts of the record—from Cricket at a trade show held in March or April.[4] In her declaration submitted in opposition to the summary judgment motion, Johnson described how she came to be injured: "I had just completed a haircut on a customer at B&B the Color Salon, my hands were dry, as was the hair I was cutting. I was palming the shears in my right hand and had a comb in my left hand. Palming the shears is a safety technique taught in cosmetology school and used basically by every haircutter who I have seen cut hair. The technique entails placing the blades of the shears in your hand while you are not using them to cut hair in order to protect the person whose hair you are cutting. As I put the Q-575's down, the comb I was holding caught on the thumb hole of the shears, causing them to roll open while they

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[1] Cricket became a distinct entity after separating from West Coast Beauty Systems in 2003. Both companies were founded by the same person, who became Cricket's president. Although the details are vague, the relationship between the two companies remains a close one, perhaps reflecting this overlap. Cricket provides some of the products marketed by West Coast Beauty Systems.

[2] This figure is particularly impressive because Johnson was not working on salary, but on a straight commission basis of 12 percent. On the other hand, she was devoting considerably more time to selling West Coast products than working at her own salon.

[3] Actually, Johnson testified at her deposition that she could only tell potential buyers about the Q-575 because it had not yet reached her distributor. After the accident, Johnson "ordered another pair to compare them."

[4] The trade show price to Johnson was $279, which she "[p]ut . . . on my West Coast account."

were still on my [ring] finger. There was nothing unusual about the way the shears rolled open at the time of the accident, in fact, this is a very common occurrence in hair cutting. I used my left hand to close the shears when the back side of the tang blade gently tapped, pierced, and sliced into my wrist, allowing the tip of the blade to pierce and embed into my left wrist/forearm area. I had to physically pull the embedded shears from my wrist/forearm area."[5] Johnson used the scissors once more—on a customer—after the accident.

Johnson's injuries caused lasting periodic numbness and impaired mobility, and incurred more than $42,000 in medical expenses.

Johnson filed a complaint in which she alleged causes of action for: (1) "Strict Products Liability—Defective Manufacture"; (2) "Strict Products Liability—Design Defect Risk Benefit Test"; (3) "Strict Products Liability—Consumer Expectation Test"; (4) "Violation of Consumer Legal Remedies Act (Civil Code, §§ 1770, 1780)" by misrepresentations amounting to deceptive practices; (5) "Injunctive Relief and Restitution for Fraudulent and Misleading Business Practices (Bus. & Prof. Code § 17200) and for False or Misleading Advertising (Bus. & Prof. Code § 17535)"; (6) "Intentional Misrepresentation"; and (7) "Negligent Misrepresentation."

[5] It is not clear from this narrative whether the scissors fell out of her hand. Johnson testified at her deposition: "[T]he next thing I knew is . . . the scissors came off my ring finger. . . . [¶] I said, 'Oh, my gosh. I dropped my brand new scissors. I've only used them twice.' And Gina [the person whose hair Johnson was cutting] looks at me and goes, 'Tracey, are you okay?' [¶] I'm like, 'No, I'm mad. "I just *dropped* my brand new scissors and they're going to be ruined,' and that's when she jumped up, and they were embedded in my arm." (Italics added.) This testimony clearly suggests what happened is that after Johnson set down the comb, and after she had closed the two blades, the now-closed Q-575 slid off her right-hand ring finger, fell, and impaled her left wrist. On the other hand, Johnson then immediately stated "I did not drop them." Oddly, Johnson also testified that "I didn't even feel it."

Because Johnson is appealing from a summary judgment, we accept the version of events most favorable to her, namely, that the tip of the Q-575 scissors she was holding in her hand pierced her wrist/forearm after being "gently tapped" with minimal pressure.

After considerable discovery had been conducted, Cricket moved for summary judgment or, in the alternative, summary adjudication. Cricket contended that Johnson could not recover for product liability because there was no defect in the design, manufacture, or lack of warning concerning the Q-575. Cricket argued that it was not liable under the Consumer Legal Remedies Act (CRLA) because (1) Johnson did not have standing in that "she did not purchase the shears as a consumer," and (2) there being no defect in the shears, there was no misrepresentation upon which Johnson could justifiably rely. Finally, Cricket argued that Johnson had no entitlement to relief under the state's unfair competition law (Bus. & Prof. Code, § 17200 et seq.) (UCL), contending that because there was no defect in the product, and no justifiable reliance upon a misrepresentation, Johnson could not establish causation or actual damage attributable to any such misrepresentation.

After hearing argument, the trial court entered a ten-page order on Cricket's motion, granting summary adjudication on all causes of action—and thus summary judgment. Johnson filed a timely notice of appeal from the judgment entered in due course.

DISCUSSION

The Standards Governing Our Review

" 'Because this case comes before us after the trial court granted a motion for summary judgment, we take the facts from the record that was before the trial court when it ruled on that motion. [Citation.] " 'We review the trial court's decision de novo, considering all the evidence set forth in the moving and opposing papers except that to which objections were made and sustained.' " [Citation.] We liberally construe the evidence in support of the party opposing summary judgment and resolve doubts concerning the evidence in favor of that party. [Citation.]' [Citation.]" (*Wilson v. 21st Century Ins. Co*. (2007) 42 Cal.4th 713, 716-717.) " 'A trial court properly grants a motion for summary judgment only if no issues of triable fact appear and the moving party is entitled to judgment as a matter of law. [Citations.] The moving party bears the

burden of showing the court that the plaintiff "has not established, and cannot reasonably be expected to establish," ' the elements of his or her cause of action. [Citation.]" (*Id.* at p. 720.)

"The purpose of summary judgment is to penetrate evasive language and adept pleading and to ascertain, by means of [admissible evidence], the presence or absence of triable issues of fact. Accordingly, the function of a trial court in ruling on a motion for summary judgment is merely to determine whether such issues of fact exist, and not to decide the merits of the issues themselves." (*Preach v. Monter Rainbow* (1993) 12 Cal.App.4th 1441, 1449-1450.)

" 'Since a summary judgment motion raises only questions of law regarding the construction and effect of the supporting and opposing papers, we independently review them on appeal, applying the same three-step analysis required of the trial court . . . . First, we identify the issues framed by the pleadings since it is these allegations to which the motion must respond by establishing a complete defense or otherwise showing there is no factual basis for relief on any theory reasonably contemplated by the opponent's pleading . . . . [¶] Second[], we determine whether the moving party's showing has established facts which negate the opponent's claim and justify a judgment in movant's favor . . . . The motion must stand self-sufficient and cannot succeed . . . without disproving even those claims on which the opponent would have the burden of proof at trial . . . . [¶] When a summary judgment motion prima facie justifies a judgment, the third final step is to determine whether the opposition demonstrates the existence of a triable, material factual issue . . . . Counteraffidavits and declarations need not prove the opposition's case; they suffice if they disclose the existence of a triable issue.' [Citations.]" (*Carleton v. Tortosa* (1993) 14 Cal.App.4th 745, 752-753.)

Johnson's Products Liability Causes of Action

Johnson alleged in her complaint that Cricket "imports, markets, distributes and sells scissors within the State of California and within the County of Humboldt, including scissors that injured plaintiff as described herein. At all times mentioned in this complaint, . . . Cricket . . . was engaged in the business of importing, marketing, distributing and selling scissors. . . . Cricket . . . places goods, including scissors, in the stream of commerce with the expectation that they will be purchased by consumers in California."

Johnson further alleged that the Q-575 scissors that injured her "were either defectively manufactured and/or defectively designed such that they had an unusually and unnecessarily sharp and/or pointed tip." And, she went on: "The specific model scissor that injured plaintiff as described above is the 'Q-575.' On defendant's website the Q-575's were advertised to be ' . . . designed for smooth cutting performance and advanced techniques such as **slide cutting**.' There is no mention of **point cutting**. See, Exhibit 1 attached and incorporated herein by reference. Slide cutting does **not** involve using the tips of the scissors. See, Exhibit 2 attached hereto and incorporated by reference. Meanwhile, defendant's website advertised its V-2 models for use in techniques including 'point cutting.' See, Exhibit 3 attached and incorporated by reference. Point cutting does involve using the points of the scissors. See, Exhibit 2 incorporated by reference. The tips of defendant's V-2 model are not nearly as pointed as the tips of the Q-575's. If the tips of the Q-575's were no more pointed than the V-2 model then plaintiff would not have been impaled or injured at all. [¶] In response to this lawsuit defendant has changed its website and now claims the Q-575's have ' "pointed" tips for the ultimate in precision/detail work.' See, Exhibit 4 attached and incorporated by reference. This new claim is a thinly veiled attempt to justify the dangerously pointed tips of the Q-575's. Additionally, this claim is blatantly false because pointed tips are not used for precision/detail work. Additionally, any scissor used for detailed cutting should be longer than 5.5 inches while the Q-575's are 5.75 inches long. Long blades are ideal

for slide cutting. See, Exhibit 5 attached and incorporated by reference. What this new claim constitutes is an admission by the defendant that the Q-575's have especially pointed tips as no other shear on its website makes this claim."

To these allegations, Johnson added the following for her first cause of action, the one for "Strict Products Liability—Defective Manufacture": "Plaintiff is informed and believes and thereon alleges that at all times mentioned in this complaint, the scissors were defective as to design, manufacture, and warnings, causing the scissors and any component parts to be in a dangerous and defective condition that made the scissors unsafe for their intended use.'

Concerning this cause of action, the trial court ruled: "Summary adjudication is granted as to strict products liability for defective manufacture. Plaintiff fails to demonstrate these scissors 'differ[] from the manufacturer's intended result or from other ostensibly identical units of the same product line.' " (Quoting *Barker v. Lull Engineering Co*. (1978) 20 Cal.3d 413, 429.)

Johnson's second cause of action, the one for "Strict Product Liability—Design Defect Risk Benefit Test," incorporated all previous allegations and added that Cricket's scissors "were so negligently and carelessly designed, manufactured, constructed, assembled, marketed, distributed and sold that the scissors were dangerous and unsafe for their intended use." What Johnson did with them was also addressed: "The scissors were used or misused in a way that was reasonably foreseeable to defendant in that [it] was foreseeable that they would be used in the manner plaintiff used them such that they would accidentally impale and lacerate users."

Concerning the specifics of the Q-575's design, Johnson alleged that "[T]he design of the scissors could have been changed at the time of manufacture such that the scissors did not have as sharp and/or pointed tips and if they were so changed the scissors would continue to cut hair as intended but not be capable of causing inadvertent stabbing injuries. [¶] . . . A rounded tip design would prevent that danger and the likelihood that such harm would occur. . . . A rounded tip design or alternative design was patently feasible in light of the fact that even this defendant imports, markets, distributes and sells

scissors with rounded tip designs that would have prevented the injuries and damages sustained by plaintiff. Attached as exhibit number 6 and incorporated herein by reference are comparisons of the pointed tips of defendant's . . . Q-575 scissors that injured plaintiff with the tips of three other models of scissors that defendant imports, markets, distributes and sells. As is readily apparent the tips of the three comparison scissors depicted on exhibit 6 were designed with rounded tips while the Q-575 scissors which caused plaintiff's injury have pointed and obviously more dangerous tips. [¶] Plaintiff is informed and thereon believes and alleges that the cost of the alternative design was quite feasible and reasonable in light of the fact that similar safer scissors are abundantly available as well as the fact that savings to users, employers, manufacturers, lessors, and distributors for medical care, lost wages and litigation resulting from injuries . . . would be avoided."

Lastly, for her "Strict Product Liability—Consumer Expectation Test," Johnson added "The scissors did not perform as safely as an ordinary consumer would have expected at the time plaintiff was injured. Ordinary consumers would not have expected the scissors to be capable of such an inadvertent impalement injury."

Concerning these causes of action, the trial court ruled:

"More difficult are the Plaintiff's second and third causes of action for product liability for design defect under the consumer expectation test or risk benefit test. As the Supreme Court stated in *Barker*:

" '. . . our cases have employed two alternative criteria in ascertaining, in Justice Traynor's words, whether there is something "wrong, if not in the manufacturer's manner of production, at least in his product."

" 'First, our cases establish that a product may be found defective in design if the plaintiff demonstrates that the product failed to perform as safely as an ordinary consumer would expect when used in an intended or reasonably foreseeable manner. . . . As we noted in *Greenman*, "implicit in [a product's] presence on the market . . . [is] a representation that it [will] safely do the jobs for which it was built." [Citation.] When a product fails to satisfy such ordinary consumer expectations as to safety in its intended or

reasonably foreseeable operation, a manufacturer is strictly liable for resulting injuries. . . .

" '. . . [A] product may be found defective in design, even if it satisfies ordinary consumer expectations, if through hindsight the jury determines that the product's design embodies "excessive preventable danger," or, in other words, if the jury finds that the risk of danger inherent in the challenged design outweighs the benefits of such design.

" 'A review of past cases indicates that in evaluating the adequacy of a product's design pursuant to this latter standard, a jury may consider, among other relevant factors, the gravity of the danger posed by the challenged design, the likelihood that such danger would occur, the mechanical feasibility of a safer alternative design, the financial cost of an improved design, and the adverse consequences to the product and to the consumer that would result from an alternative design . . . . [¶] we conclude that once the plaintiff makes a prima facie showing that the injury was proximately caused by the product's design, the burden should appropriately shift to the defendant to prove, in light of the relevant factors, that the product is not defective. Moreover, inasmuch as this conclusion flows from our determination that the fundamental public policies embraced in *Greenman* dictate that a manufacturer who seeks to escape liability for an injury proximately caused by its product's design on a risk-benefit theory should bear the burden of persuading the trier of fact that its product should not be judged defective, the defendant's burden is one affecting the burden of proof, rather than simply the burden of producing evidence.' [Citations.] [(*Barker v. Lull, supra,* 20 Cal.3d 413, 429-432.).]

"The question for summary judgment/adjudication as to the consumer expectation test is whether Plaintiff has demonstrated a triable issue as to whether those scissors 'failed to perform as safely as an ordinary consumer would expect when used in an intended or reasonably foreseeable manner.'

"Plaintiff alleges, 'There was a severe danger of serious harm and even death from use of scissors with the pointed and/or sharp tip(s) . . . Ordinary consumers would not have expected the scissors to be capable of such an inadvertent impalement injury.'

"The court will grant summary adjudication as to the third cause of action, consumer expectation test. Plaintiff establishes the scissors were pointed, having a sharp tip, but fails to demonstrate the scissors did not perform as safely as an ordinary consumer would expect in their use. As defendant points out, if having a sharp tip is sufficient to establish a product fails the consumer expectation test, any sharp tipped product would subject the manufacturer to liability for injury.

"Under the risk-benefit the first question is whether Plaintiff has made a prima facie showing that her injury was proximately caused by the product's design. Plaintiff has shown she was injured by the tip of the scissors, but Defendant argues:.

" 'Plaintiff's injury was the result of a series of mishaps, all attributable to the user. Professionals and average consumers alike are aware of risk in working with sharp objects. Plaintiff had the option to purchase the obviously less pointed, shorter shears but elected not to. Her loss of control while using those shears does not render the point or sharpened blade the *legal cause* of her injury. Had she not opened the shears with her comb, moved her wrist toward the open blade or lost her ring finger grip, her injury would not have occurred.'

"Summary adjudication is granted as to the risk-benefit test. It is true Plaintiff's injuries were caused by the sharp tip of the scissors, but more than simply a sharp tip from a product, causing injury, is required to become the legal cause of the injury, shifting to defendant the burden of proving the product is not defective."

"A manufacturer may be held strictly liable for placing a defective product on the market if the plaintiff's injury results from a reasonably foreseeable use of the product. [Citations.] Products liability may be premised upon a theory of design defect, manufacturing defect, or failure to warn. [Citation.] Defective design may be established under two theories: (1) the consumer expectations test, which asks whether the product performed as safely as an ordinary consumer would expect when used in an intended and reasonably foreseeable manner; or (2) the risk/benefit test, which asks whether the benefits of the challenged design outweigh the risk of danger inherent in the design. [Citations.]" (*Saller v. Crown Cork & Seal Co*. (2010) 187 Cal.App.4th 1220,

1231-1232.) "A manufacturing defect exists when an item is produced in a substandard condition. [Citations.] Such a defect is often demonstrated by showing the product performed differently from other ostensibly identical units of the same product line. [Citation.]" (*McCabe v. American Honda Motor Co*. (2002) 100 Cal.App.4th 1111, 1120.)

The parties devote a fair amount of attention in their briefs to the issue of whether, for purposes of the summary judgment motion, Cricket was bound by discovery responses and admissions that it was not the actual designer or manufacturer of the scissors, but merely the assembler of parts forged in Japan and Korea, which Cricket then packaged and distributed wholesale. This is a pointless controversy. "We follow a stream of commerce approach to strict liability in tort and extend liability to all those who are part of the 'overall producing and marketing enterprise that should bear the cost of injuries from defective products.' [Citation.] The doctrine of strict liability in tort has been applied not only to manufacturers but to the various links in the commercial marketing chain . . . ." (*Becker v. IRM Corp*. (1985) 38 Cal.3d 454, 459; accord, but overruling *Becker* on another point, *Peterson v. Superior Court* (1995) 10 Cal.4th 1185, 1189, 1198.) Thus, it matters not whether Cricket is characterized as a designer, a manufacturer, or a distributor because it is certainly "part of the 'overall producing and marketing enterprise.' "

The parties' respective positions are readily comprehended. Johnson showed that not only were the cutting edges of the two parts of the scissors sharpened up to the tip, so was one of the outer non-cutting edges. Plus, the tip was unusually narrow, thus making the Q-575 virtually a stabbing instrument. How else to explain how a gentle nudge could produce a wound of such severity. Put these features together, and you have a defective product. In its moving papers, this is the entirety of Cricket's position as to why "There is no Manufacturing Defect: [¶] A product is defective when it contains a 'manufacturing defect' i.e., it departs from its intended design even though all possible care was exercise[d] in the preparation and marketing of the product. The Q-575s were designed to have pointed tips. They did. There is simply no evidence the Q-575s involved in

Plaintiff's injury departed from their intended design, thereby negating any manufacturing defect." This is pretty much what Cricket argues in its brief. Moreover, as Johnson notes in her brief, "[n]o affidavits or other evidence were offered on this point" by Cricket.

We therefore cannot sustain the trial court in its determination that Cricket was entitled to summary adjudication of the manufacturing defect cause of action because "Plaintiff fails to demonstrate these scissors 'differ from the manufacture's intended result or from other ostensibly identical units of the same product lines." It was not Johnson's obligation to "demonstrate" anything, at least not until Cricket had produced evidence sufficient to sustain a verdict in its favor. This, Cricket failed to do. It did not proffer evidence that Johnson 's Q-575 did not "depart from its intended design," nor did it produce evidence of other Q-575s to establish no such divergence. Our Supreme Court has held that a defect may be shown by "deviations from the norm" of manufacturing. (*Jiminez v. Sears, Roebuck & Co*. (1971) 4 Cal.3d 379, 383-384.) Cricket made no attempt to make this kind of showing.

The same is essentially true for Johnson's cause of action for defective design. The trial court's emphasis on the apparent peril of scissors seems to reflect the so-called "obvious danger rule," which is relevant in products liability, but only with respect to a manufacturer's duty to warn. (See *Johnson v. American Standard, Inc*. (2008) 43 Cal.4th 56, 65-67.) Simply concluding that scissors are sharp and everybody knows it does not justify granting summary judgment. Cricket presented no evidence to support its decision to move to the Q-575 model; in other words, why the Q-575 was an improvement on the C2-525 model. On the other hand, Johnson presented the deposition testimony of two Cricket officials that there was no reason why "the tips of the Q-575 could not have been more rounded."

Further, Cricket presented no evidence that Johnson suffered her injury while misusing the Q-575 in an unforeseen fashion. Yes, certainly Cricket is justified as a matter of common sense in pointing that the function of scissors is to cut, and for this purpose they must be sharp, and the Q-575 was indeed sharp and it did cut. An ordinary

consumer certainly expects a pair of scissors to be sharp enough to cut hair, but hardly expects a gentle nudge will result in more than $40,000 of medical expenses. Reduced to its essence, Cricket made no real attempt to demonstrate that the design was not defective and thus not the cause of Johnson's injuries. Nor did it try to satisfy the risk-benefit test by producing the information that it alone would possess concerning the advantages, disadvantages, and costs of the switch to the Q-575. (See *Barker v. Lull Engineering Co*., *supra*, 20 Cal.3d 413, 431.)

Because Cricket failed to carry its initial burden with respect to any of Johnson's products liability causes, the strength of Johnson's opposition becomes immaterial. Cricket was therefore not entitled to summary adjudication of Johnson's first three causes of action. (See, e.g., *Saelzler v. Advanced Group 400* (2001) 25 Cal.4th 763, 768; *Gonzalez v. Autoliv ASP. Inc*. (2007) 154 Cal.App.4th 780, 786-787; *McCabe v. American Honda Motor Co*., *supra*, 100 Cal.App.4th 1111, 1123-1127.)

Johnson's Cause Of Action For Misrepresentation Under the CRLA

Johnson's fourth cause of action was based on alleged misrepresentations. Specifically, Johnson alleged that she was the victim of Cricket's misrepresentations that "(1) . . . it is the manufacturer of the scissors it imports, markets, distributes and sells including but not limited to the Q-575's referenced above, when in fact it is not a manufacturer of any of said scissors, and/or [¶] (2) . . . it is a designer of the scissors it imports, markets, distributes and sells including but not limited to the Q-575's referenced above, when in fact it does not, and/or [¶] (3) . . . it conducts a specified rigorous 7-step quality control process of every scissor it imports, markets, distributes and sells prior to its sale, when in fact it does not."

The trial court granted summary adjudication for the following reason: Plaintiff's fourth cause of action is brought under the Consumer Legal Remedies Act, CC § 1770, 1780, alleging in particular violations of § 1770(a)(1), (2), (4), (5), and (7). CC § 1761(d) defines consumer as an individual who acquires by purchase any goods for 'personal family, or household purposes.'

"In her deposition testimony of July 8, 2008, Plaintiff when asked: 'What made you get the Q-575 model that day?' she responded, 'So I purchased them thinking that I could at least show them to him (a difficult client Plaintiff sold to as a salesperson) and then sell them to him, and that was my original intent when I purchased them.' Plaintiff testified she purchased the scissors at a trade show, put them on her West Coast Beauty Systems Account, and used them on three customers.

"Plaintiff did not purchase the scissors as a consumer, as defined in CC § 1761(d), and thus lacks standing to bring a claim under the CRLA."

We agree with this analysis. The purpose of the CTLA is "to protect *consumers* against unfair and deceptive business practices." (Civ. Code, § 1760, italics added.) Johnson further testified at her deposition that Q-575 scissors are not offered for sale to the general public, but can only be purchased from "a distributor . . . [¶] for professional use." "Q. What about the Q-575? Can just a regular customer go out and buy that? A. No." Cricket's vice-president for sales testified at his deposition that Cricket's markets its products "only through professional beauty supply distribution."

The record establishes as a matter of law that the scissors were neither purchased for Johnson's personal use, nor were they ever used for such use. Thus, she does not meet the statutory definition of a CRLA consumer: "an individual who . . . acquires, by purchase or lease, any goods or services for personal, family or household purposes." (Civ. Code, § 1761, subd. (d); cf. *California Grocers Assn. v. Bank of America* (1994) 22 Cal.App.4th 205, 217 [member of trade association not a "consumer" under CRLA].) This conclusion is reinforced by looking at the CRLA's defining of "goods" as "tangible chattels bought or leased for use primarily for personal, family or household purposes." (Civ. Code, § 1761, subd. (a).)

Johnson's Causes Of Action Under The UCL

The same misrepresentations Johnson identified under her CRLA cause of action were realleged as the basis for her cause of action under the UCL. In addition, Johnson claimed Cricket also misrepresented that it owned "overseas factories" when in fact Cricket "owns no factories overseas nor in the United States."

As to this, the trial court ruled as follows:

"Plaintiff's fifth cause of action is brought for business practices under the . . . Unfair Competition Law . . . . B&P § 17204 states claims for relief may be brought 'by a person who has suffered injury in fact and has lost money or property as a result of the unfair competition.'

"In *Hall v. Time, Inc*. (2008) 158 Cal.App.4th 847, 854-855, the court discussed:

" '. . . . a Plaintiff suffers an injury in fact for purposes of standing under the UCL when he or she has:

" '(1) expended money due to the defendant's acts of unfair competition . . . .

" '(2) lost money or property . . . .

" '(3) been denied money to which he or she has a cognizable claim . . . .

" 'In this case, Hall did not allege he suffered he suffered an inquiry in fact under any of these definitions. He expended money by paying Time $29.51—but he received a book in exchange. He did not allege he did not want the book, the book was unsatisfactory, or the book was worth less than what he paid for it.

" 'B. Causation

" 'Even if Hall's payment for the book could be construed as an injury in fact, he nonetheless would fail to satisfy the second prong of the standing test—that he "lost money or property as a result" of the alleged unfair competition. We conclude this second prong imposes a causation requirement. The phrase "as a result" in its plain and ordinary sense means "caused by" and requires a showing of a causal connection or reliance on the alleged misrepresentation.

" '[¶] We use the word "causation" to refer both to the causation element of a negligence cause of action . . . , and to the justifiable reliance element of a fraud cause of action [(*Engalla v. Permanente Medical Group, Inc*. (1997) 15 Cal.4th 951, 974.)]. In a fraud case, justifiable reliance is the same as causation, thus "[a]ctual reliance occurs when a misrepresentation is ' "an immediate cause of [a plaintiff's] conduct, which alters his legal relations," ' and when, absent such representation," the plaintiff " ' "would not, in all reasonable probability, have entered into the contract or other transaction." ' " [(*Engalla v. Permanente Medical Group, Inc*., *supra*, 15 Cal.4th at p. 976.)] . . . ['specific pleading is necessary to "establish a complete causal relationship" between the alleged misrepresentations and the harm claimed to have resulted therefrom'].) Cases construing the Proposition 64 amendments to the UCL often use the terms "causation" and "reliance" together or interchangeably . . . '

"As in *Hall*, Plaintiff did not allege she suffered an injury in fact under any of the *Hall* definitions, she did expend money for purchasing the scissors, but did receive the scissors, she did want the scissors, the scissors were not unsatisfactory, other than too pointed, nor were the scissors worth less than what she paid.

"Even assuming an injury in fact, Plaintiff fails to establish the causation requirement. As stated, 'specific pleading is necessary to "establish a complete causal relationship" between the alleged misrepresentations and the harm claimed to have resulted therefrom.' "

All of this discussion about what Johnson did or not did not allege sounds as if the trial court was ruling on a demurrer. This was not necessarily improper, in that a motion for summary judgment can be treated as a motion for judgment on the pleadings. (See *Crouse v. Brobeck, Phleger & Harrison* (1998) 67 Cal.App.4th 1509, 1532.) But our de novo review does not convince to emulate the trial court's approach. A much simpler solution is readily at hand.

As noted in the excerpt from *Hall* quoted by the trial court, the law is clear that "Actual reliance occurs when a misrepresentation is ' "an immediate cause of a [plaintiff's] conduct, which alters his legal relations," ' " and when, absent such

representation, ' "he would not, in all reasonable probability, have entered into the contract or other transaction." ' [Citations.] 'It is not . . . necessary that [a plaintiff's] reliance upon the truth of the fraudulent misrepresentation be the sole or even the predominant or decisive factor in influencing his conduct . . . . It is enough that the representation has played a substantial part, and so have been a substantial factor, in influencing his decision.' [Citation.]" (*Engalla v. Permanente Medical Group, Inc.*, *supra*, 15 Cal.4th 951, 976-977.)

Johnson came nowhere near satisfying this standard. In fact, the sum total of the information she possessed prior to buying the Q-575 was her deposition testimony that she had heard "at one of our [West Coast] sales meetings[] that they were going to redesign" the existing model, and these statements in her declaration opposing summary judgment: "As a salesperson and a consumer of Cricket products at the time I purchased the Q-575 shears I was very familiar with the promotional material, labels and packaging that the shears came with. The Q-575 shears that I purchased came fully packaged with all labels and literature . . . . [¶] Attached . . . are true and correct copies of pages from Cricket Company's website from both before and after the purchase by me of the Q-575 shears . . . ." In short, there was no evidence that Cricket made any actual representations—much less misrepresentations—which were heard or read by Johnson, and which played any part in Johnson's decision to purchase the Q-575 shears. Thus, from a different angle, we agree with the trial court that Johnson presented no evidence of the justifiable reliance that proves causation under the UCL.

Johnson's Causes Of Action For Intentional And Negligent Misrepresentation

All of the misrepresentations identified in Johnson's CRLA and UCL causes of action were realleged as the basis for her causes of action for intentional and negligent misrepresentation. Johnson further alleged that "On or about 4-4-06, plaintiff, read, saw, and heard defendant's advertisements. Relying on the representations . . . made by defendant, plaintiff on or about 4-4-06 purchased a model Q-575 scissors from defendant."

The trial court granted summary adjudication on these causes of action as follows:

"Plaintiff alleges in the sixth and seventh causes of action, intentional and negligent misrepresentation.

"In *Molko v. Holy Spirit Assn*. (1988) 46 Cal.3d 1092, 1108, the Supreme Court in discussing fraud claims, stated:

" 'The necessary elements of fraud are: (1) misrepresentation (false misrepresentation, concealment, or nondisclosure); (2) knowledge of falsity (scienter); (3) intent to defraud (i.e., to induce reliance); (4) justifiable reliance; and (5) resulting damage.' [Citation.] . . .

"Assuming misrepresentation, Plaintiff has not established detrimental reliance. Plaintiff purchased the scissors as a salesperson to resell. After purchasing a different model, she returned to the trade show to exchange the original purchase for the Q-575 model. Plaintiff acknowledges awareness of the sharp, pointed tip at the time of purchase. Reliance on misrepresentation is not shown."

Again, our de novo approach leads us to the same result but via a slightly different trail. The discussion *ante* concerning the absence of justifiable reliance for purposes of Johnson's UCL cause of action is equally applicable here to demonstrate that there was no triable issue of material fact regarding pre-purchase reliance by Johnson upon misrepresentations by Cricket.

DISPOSITION

The summary judgment is reversed as to the first, second, and third causes of action, and affirmed as to the fourth, fifth, sixth, and seventh causes of action. The parties shall bear their respective costs of appeal.

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Richman, J.

We concur:

_____
Kline, P.J.

_____
Haerle, J.